

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

&

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

MFA.No. 1063 of 2000(B)

OPMV.2445/1993 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KOLLAM
.....

APPELLANT: PETITIONER

**G.EASWARDETH, S/O. GOPALAN, SREEMANDIRAM,
CHAVARA P.O. KOLLAM.**

BY ADV. SRI.B.MOHANLAL

RESPONDENTS: RESPONDENTS

- 1. G.MOHANAN, S/O.GOPALAN, KOCHUKARIKKATTIL,
MEENAD CHATHANOR P.O. KOLLAM.**
- 2. K.WILSON, KOCHUKATTIL PUTHEN VILAYIL,
KANNANCODE, ADOOR P.O.
PATHANAMTHITTA DISTRICT.**
- 3. THE ORIENTAL INSURANCE COMPANY LTD.,
THIRUVANANTHAPURAM REP.BY THE MANAGER,
ORIENTAL INSURANCE COMPANY,
KOLLAM BRANCH, KOLLAM DISTRICT.**

BY ADV. SRI.P.V.JYOTHI PRASAD - R3

**THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 10/07/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

J.B. KOSHY and K.P.BALACHANDRAN, JJ.

M.F.A. No. 1063 of 2000

Dated this the 10th day of July, 2007

Judgment

Koshy, J.

Appellant/Claimant, who was a pillion rider in the scooter bearing registration No. KL-2/5431, sustained serious injuries when the above scooter hit a mini lorry bearing registration No. KL-2B/633 driven by the second respondent. It is his case that the scooter hit the timber that was abutting from the mini lorry due to the rash and negligent driving of the mini lorry. The tribunal found that the accident occurred due to the negligence of the driver of mini lorry as well as the rider of the scooter. But, the rider of the scooter or insurance company were not impleaded. Since negligence was attributed equally between both drivers, 50% compensation was only awarded. Against a claim of Rupees Three lakhs only Rs.49,200/- was calculated and 50% was only granted to be realised from the insurance company of the mini lorry. Thus petitioner was entitled to receive only Rs.24,600/-.

2. With regard to the finding of negligence, the tribunal found as follows:

"According to the 3rd respondent, the mini lorry was being parked on the road side when the scooter came from behind and hit the timber that was abutting from the mini lorry. Rashness and negligence on the part of the person, who was riding the scooter alone was responsible for the accident. The Chavara Police registered Crime No.214/93 against the driver of the mini lorry for rash and negligent driving and thereby causing the accident. Ext.A1 is the copy of F.I.R. registered by the Chavara Police. Even from the first information statement, it is clear that the scooter hit the timber that was abutting behind the mini lorry. It is further seen that as per the first information statement, no danger light was switched on at the time of accident. Ext.A3 is the copy of scene mahazar prepared by the Sub Inspector of Police, Chavara Police Station. The spot of accident was 1.7 metres west of the eastern tar end. The accident happened on N.H. 47 which had sufficient width. It is not disputed that both the vehicles were proceeding from north towards south and the scooter hit the timber abutting from the rear side of the mini lorry. The police after investigation filed Ext.A2 charge sheet against the driver of the mini lorry for rash and negligent driving. It is clear from Ext.A2 that the scooter came from behind and hit the

abutting timber. It is not at all stated that no danger light was parked on at the time of accident. It was the duty of the person who was riding the scooter also to be careful. A vehicle that is proceeding in front may be stopped abruptly for so many reasons. It is for the person who is proceeding behind to keep sufficient distance and be careful. Apparently, the person who was riding the scooter failed in that duty. The evidence indicates that the mini lorry was parking on the road side at the time of accident as alleged. The only allegation attributing negligence on the part of the driver of the mini lorry is that no danger light was exhibited at the back. That fact alone may show that the second respondent was rash and negligent. But, it is not sufficient to absolve the person who was riding the scooter entirely from the charge on contributory negligence. So on an appreciation of the available evidence, I am inclined to hold that both the 2nd respondent and the person who was riding the scooter have contributed to the accident equally."

After considering the evidence including copy of F.I.R., charge sheet, A.M.V.I. reports etc., we are of the opinion that finding of the tribunal is perfectly right and no interference is required.

3. 10% disability was found by the doctor as can be seen from Ext.A9 disability certificate. Ext.A5 is the copy of accident register-cum-wound certificate issued from the said hospital. The injuries noted are:

- (1) Lacerated injury muscle deep left thigh 10 c.ms. x 4 c.ms.
- (2) Fracture of bone metacarpal right;
- (3) Fracture both bones left fore arm;
- (4) Abrasion right forearm 4 c.ms. x 1 c.m."

He was referred to the Upasana Hospital, Kollam. Ext.A6 is the copy of accident register-cum-wound certificate issued from the Upasana Hospital. The injuries noted are both bones fracture left forearm with dislocation of left wrist, fracture base of first metacarpal right, injury left thigh lower 1/3rd multiple injuries, lacerated injury left thigh cutting fossa lata. X-ray examination revealed fracture lower 1/3rd radius with dilocation lower end of ulna left and bennets fracture dislocation right hand. Ext.A7 is the discharge card issued from the Upasana Hospital. An operation was done on 9.8.1993 and open reduction and K wire fixation of right bennets fracture dislocation was done. Internal fixation of the left radius was also done. He was discharged from the hospital on 18.8.1993. It is mentioned that he sustained

extensive lacerated injury on the thigh. Ext.A8 is the medical certificate issued from the Upasana Hospital. Ext.A9 is the permanent disability certificate issued by Dr. C. Ramanunni, Specialist in Orthopaedics, District Hospital, Kollam. On examination to assess the permanent disability the petitioner was found to have post traumatic arthritis of Trapezeo metacarpal bone right side and limitation of 60 degree supination of left fore arm and 15 degree dorsiflexion and 10 degree palmar flexion of left wrist. He has also an adherent scar on the anteriolateral aspect of left thigh. The doctor has assessed the extent of permanent disability of the petitioner at 10%. However, for disability and loss of earning power, amount was not calculated on a multiplier method as his employment was not lost because of the accident. But, for disability Rs.10,000/- was allowed. For loss of amenities during the period of long treatment, another Rs.10,000/- was allowed by the tribunal. It is the contention of the petitioner that he was getting a monthly salary of Rs.5,172/-. He was employed as a Fitter. In view of the 10% permanent disability, he will not be able to get employment after his retirement even though being a Central Government company, his employer may retain him and if compensation

is calculated on multiplier method, he will get at least Rs.50,000/- as compensation for 10% disability, but, since his salary was not affected, we are of the opinion that compensation cannot be granted on multiplier method.

In the above circumstances, for permanent disability and loss of earning power, instead of Rs.10,000/- we are of the opinion that Rs.17,000/- ought to have been awarded. So, additional amount is only Rs.7,000/-. After deducting 50% for contributory negligence, amount payable is Rs.3,500/-. Third respondent insurance company is directed to deposit the above amount of Rs.3,500/- with 8% interest from the date of application till the date of deposit. On deposit of the amount, the appellant is entitled to withdraw the same.

J . B . KOSHY
JUDGE

K . P . BALACHANDRAN
JUDGE

vaa

**J.B. KOSHY AND
K.P.BALACHANDRAN, JJ.**

M.F.A.NO.1063/2000

JUDGMENT

Dated:10th July, 2007